COMMON PLEAS COURT
FRANKLIN COUNTY
STATE OF OHIO
- - -

Ann N. Nardi, et al.,
Plaintiffs,
vs. : Case No. 94CVA-05-3151
Dr. Saeeda Mobin-Uddin,
Defendant.
- - -

May 6, 1999

Deposition of

Stephen J. DeVoe, M.D.

A witness herein, called by the Plaintiffs for cross-examination under the applicable Rules of Ohio Civil Court Procedure, taken before me, Beth A. Higgins, a Registered Professional Reporter and Notary Public in and for the State of Ohio, by agreement of counsel, at the offices of the witness, 3555 Olentangy River Road, Columbus, Ohio 43214, on Thursday, May 6, 1999, commencing at approximately 8:15 a.m.

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APPEARANCES:
TERRI LEN JOHNSON, Esquire
and SIMINA VOURLIS, Esquire
Plymale & Associates
350 South High Street, Suite 200
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On behalf of the Plaintiffs.

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On behalf of the Defendant.

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Thursday Morning Session
May 6, 1999
8:15 a.m.

STIPULATIONS

It is hereby stipulated by and between counsel for the respective parties herein that this deposition of Stephen J. DeVoe, M.D., may be taken at this time by the Notary; that said deposition is being taken by agreement of counsel; that said deposition may be reduced to writing in stenotypy by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualifications of the Notary, and the time and place of the taking of said deposition are hereby waived.

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PROCEEDINGS

STEPHEN J. DEVOE, M.D.
being by me first duly sworn, as hereinafter certified, deposes and says as follows:

CROSS-EXAMINATION

BY MS. JOHNSON:

Q. Doctor, can you state your name and address for the record, please?
A. Stephen John DeVoe, 3555 Olentangy River Road, Columbus.
Q. Doctor, my name is Terri Johnson; and besides introducing ourselves just a few moments ago, have you ever met me before?
A. No.
Q. I represent the plaintiffs in this case, Annie Nardi and her mother; and I'm going to be asking you a series of questions.
I assume you've done this before; correct?
A. Yes.
Q. So you know that your answers have to be verbal as opposed to a nod of the head or a gesture?
A. Yes.

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Q. And I have a little bit of a cold today. If you can't understand my question or you don't hear it, will you let me know?
A. Sure.
Q. Now, I understand you're serving as an expert witness for Dr. Mobin-Uddin in this case. Is that correct?
A. That's correct.
Q. And you gave testimony in this matter about three years ago; correct?
A. Yes.
Q. Before testifying today, did you review your testimony at your last deposition?
A. I reviewed some notes from it.
Q. Okay. And did you review the medical records in the case?
A. Yes.
Q. Did you review anything else?
A. A variety of depositions which have been taken since that time or that would have been taken before that I didn't have until recently.
Q. Okay. Would that be Nurse Long?
A. Long I had before, but several physical therapy people, physical medicine people, the

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grandmother, subsequent physical therapy records that were collected after the -- the baby's delivery.
Q. Okay. Did you also review Dr. Goldstein's deposition?
A. Yes.
Q. Okay. And have you reviewed any medical literature or articles, anything like that?
A. Specifically to prepare for this?
Q. Yes.
A. No.
Q. Okay. The opinions you're going to be offering in the trial at this case, will any of them be based on any medical literature, textbooks, or articles?
A. Uhm, I don't know the answer to that. I think -- You know, I think -- I can't answer that specifically.
Probably, without having anything specific in mind, because some of what you practice and think is -- reflects of all your experience, including education, which is obtained by reading.
Q. Okay.
A. I can't put my finger on any specific items I've read, though.

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Q. Okay. If there comes a time before you actually come in to testify at trial that you've decided you are going to be relying on any medical articles or textbooks or other kinds of medical literature, will you let your attorney know so that he can advise us?
A. He's not my attorney, but I would let him know.
Q. Okay.
A. You know, I would tell you that I'm sure I'm relying on textbooks, articles, things I've read and heard without any specific notation. I assume you understand that.
Q. Okay. Well, can you think of any articles you're relying on in forming your opinions?
A. I'm doing this with 25 years. I can't think of anything specific, but I've read lots articles about shoulder dystocia.
Q. And can you think of any particular medical textbook articles you're going to rely on?
A. Nothing in specific at this point.
Q. Okay. My question, then, was if you think of something in particular you're planning on relying on, will you let Mr. Foliano know?

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A. Sure.
Q. Okay. Have you served as an expert for Mr. Foliano in the past?
A. Yes, once or twice.
Q. Okay. And what types of cases were those?
A. I don't remember. Not a shoulder dystocia case.
Q. Okay. Have you also served as an expert for other attorneys in his firm?
A. Uhm, well, another attorney in his firm had this before.
I have served on -- When Virginia Lohmann was in that firm, I looked at a case or two for her, so -- and Jim Oliphant, also. So that "yes" is the answer, I guess.
Q. And were any of those shoulder dystocia cases?
A. Not to my knowledge, although I could be wrong.
Q. Have you served as an expert in any other shoulder dystocia cases?
A. Yes.
Q. And was that on one other occasion or

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more than one other occasion?
A. More than one.
Q. Do you remember what law firm had retained your services in those cases?
A. No, I don't.
Q. Do you remember who the plaintiffs were in those cases?
A. No.
You know, the details of these things just leave instantly as soon as it's over with. I don't have any idea. And it's over the years.
Q. Do you know if you've served as an expert in any Erb's palsy or shoulder dystocia cases since you last testified in this case in '96?
A. Yes.
Q. Okay. And were those cases pending in Franklin County?
A. No.
Q. Where were those cases pending?
A. Uhm, are pending.
Q. Or are pending?
A. One of them's in Dayton. One of them's in Akron. I don't know where the other one is. Some small town.

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Q. In Ohio?
A. Yes.
Q. And those were Erb's palsy or shoulder dystocia cases?
A. Shoulder dystocia.
Q. Okay. Have you served as an expert in Franklin County on a shoulder dystocia case?
A. I don't know. I don't remember. And, you know, I -- The last one that I -- that I recall was some years ago, and I have no idea who the plaintiff was or where it was or who the attorneys were.
Q. Okay. And that would have been before you gave testimony in this case in '96?
A. The best of my recollection, but I -- you know, I can't remember. The years run together.
Q. Okay. Has Mr. Foliano or anyone in his law firm ever represented you in a medicolegal matter?
A. Jim Oliphant represented me about a year ago in a medicolegal matter. There was no suit filed, but the hospital and I left an endo bag in a lady's abdomen in a laparoscopy, and they threatened to file suit. And we obviously didn't have a lot

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of--
You know, we felt like we had to settle it, so we settled it; and Oliphant represented me in that.
Q. Okay. That was a settlement before a lawsuit was filed?
A. Yes.
Q. Any other --
A. The lady had to have a second procedure, just -- She had to have a laparoscopy to have the endo bag taken out, and that was the end of it.
Q. Any other occasions that someone from his offices represented you?
A. No.
Q. When you reviewed your notes from your last deposition, do your opinions in this case stay the same now as they did three years ago?
A. Yes.
Q. In your opinion, did the injury that Annie Nardi suffered, did that occur during the birth process?
A. Sometime during the birth process most likely.
Q. Okay. What were the mechanics involved

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in how that injury developed?
A. We don't know for sure.
Q. If I recall correctly, you had no complaints about the care that was given by Dr. O'Leary. Is that correct?
A. That's correct.
Q. And you had no complaints about the care given by any of the staff members at St. AM's; --
A. That's --
Q. -- correct?
A. That's correct.
Q. Do you have any opinions as to whether any subsequent treating physicians were responsible in any way for the injuries?
A. I can't review physical medicine treatment as an expert, so I have no opinion right or wrong.
Q. Let me phrase it this way.
At trial, are you going to be offering any opinions that any subsequent treating healthcare professionals caused the injuries?
A. No.
Q. How would you define shoulder dystocia?

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A. Shoulder dystocia. Difficulty delivering the baby's shoulders after the head is delivered.
Q. Okay. And is there a -- some type of mechanical reason for difficulty in delivering the shoulders?
A. Uhm, the -- Mechanically it's a disproportion between the size of the shoulders and the available space.
Q. And what physically impedes the delivery of the shoulders in those instances?
A. Recognize we are talking about shoulder dystocia here, not Erb's palsy.
Q. Correct.
A. They are two different entities.
Q. Correct.
A. What impedes the delivery process is the pubic symphysis usually or occasionally the sacral promontory and the pubic symphysis.
Q. Okay. And is the symphysis pubis, in your opinion, what was causing the difficulty in delivering the shoulder in this case?
A. It was the mechanical impediment here, yes.

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Q. Now, you mentioned a differentiation between shoulder dystocia and Erb's palsy.
In your opinion, did this child's Erb's palsy result from difficulties in the birth due to the shoulder dystocia?
A. You know, we don't know when Erb's palsies occur. The more you study this, the more unclear it is, in that there are babies born who have Erb's palsies and have no shoulder dystocia in their record. There have been babies delivered who have had Erb's palsies after being delivered by C-section. There are babies delivered who get stuck with one shoulder; and the other side, the other shoulder, the other brachial plexus is injured.
So that said, it's -- when you recognize that there's a lot unknown about how this process works, it becomes much more difficult to be precise about when and what happened.
Q. Okay. Well, in this particular case, is it your opinion that the Erb's palsy, and more likely than not, resulted from events stemming from the shoulder dystocia?
A. More likely than not, yes.
Q. Now, in your opinion, there was never

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any indication for a cesarean-section delivery for this baby; is that correct?
A. That's correct.
Q. And in your opinion, everything was fine with the labor and delivery sequence, at least up to the point where the baby's head was crowning. Is that correct?
A. Yes.
Q. So we can just skip by all that part?
There's nothing in there that is relevant to the injuries that occurred; is that correct?
A. Uhm, yeah, I -- I agree with that. You know, the --
Yeah, I agree with that.
Q. Okay. I'm not trying to put words in your mouth. I'm just trying to limit the focus of our questioning here.
A. That's fine.
If somebody comes back and says this lady should have been recognized as a problem for shoulder dystocia -- as a candidate for shoulder dystocia, and we haven't talked about the reasons why she wasn't a high -- high-risk shoulder dystocia

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patient, then we've missed an opportunity to help defend the -- the care.
Q. Okay. And you understand Dr. Goldstein indicated that he did not feel she was a high risk for shoulder dystocia; correct?
A. Yes.
Q. Okay. And you agree with that opinion?
A. Yes.
Q. Two of the maneuvers that Dr. Mobin-Uddin performed, the McRoberts and the rotation of the shoulders to the oblique diameter, those are appropriate maneuvers for handling a shoulder dystocia; correct?
A. Yes.
Q. And in your opinion, when those maneuvers were performed, they were done correctly?
A. Yes.
Q. In fact, the rotation of the shoulders is what ultimately freed the impacted shoulder; correct?
A. Correct.
Q. Now, I believe last time you had answered some questions about applying fundal pressure to deliver the head; and would you agree

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that that's not necessarily what everybody would like to do, but it's accepted medical practice?
A. I think fundal pressure is accepted medical practice.
Q. Okay. And that's for the delivery of the head?
A. Well, I think --
I assume you're going to ask more questions.
Q. Correct.
A. Is it acceptable medical practice for delivery of the head? Yes.
Q. Okay. Also, is the use of fundal pressure in connection with other simultaneous maneuvers acceptable in some circumstances for delivery of an impacted shoulder?
A. Yes.
Q. Okay. Are there circumstances when fundal pressure can be applied in a shoulder dystocia case where it is a departure from accepted medical standards?
A. I think it's a de- -- can be a departure if it's not -- if it's done in the absence of other efforts,--

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Q. Okay.
A. -- but that requires -- It really relies on the judgment of the physician at the time whether or not the fundal pressure is needed. And even in those situations, there may be a possibili- -- there may be appropriate care to use fundal pressure when -- when other things haven't been done.
Q. Okay. Well, let's kind of dissect that.
You said it might be appropriate in connection with other maneuvers, I think.
A. Right.
Q. Okay. Explain to me what you mean by that.
A. Well, I think that's kind of reiterating what you asked in a previous question.
Fundal pressure is part of the Hibbard maneuver, for example. Hibbard.
Fundal pressure is a useful tool to augment maternal expulsive efforts, particularly if the mother's fatigued and can't add anything to the delivery effort or adds a less than an optimal amount of energy to help deliver.
Fundal pressure is perfectly appropriate to deliver the abdomen if the -- when the shoulders

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are freed, for example, in a large baby.
Q. At the point where the shoulders are impacted, is it appropriate to apply fundal pressure without any other maneuvers being given simultaneously?
A. The shoulders are impacted and nothing else is done.
Q. Uh-huh.
A. And you know the shoulders are impacted or that it's not recognized till afterwards that the shoulders were impacted?
Q. Well, let's try it both ways. Let's try it before you know whether or not the shoulders are impacted.
A. I think shoulder -- fundal pressure could be appropriate in that circumstance.
Q. Okay. And what about after the shoulders are impacted, after you recognize it?
A. I still see that shoulder -- or fundal pressure is used occasionally in that circumstance.
You have to recognize that shoulder dystocia occurs probably up to one percent of births; and most the time it's relieved with fundal pressure, increasing maternal expulsive efforts, and/or these

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maneuvers. So it gets used a lot, and, you know.
Q. Okay. Just so that I'm clear, there are occasions when, in your opinion, it's okay to use fundal pressure when you recognize that you have an impacted shoulder even though you're not contemporaneously using any other maneuvers. Is that correct?
A. If the mother isn't pushing at all, you know, or her effort is suboptimal due to fatigue or lack of cooperation or whatever, a small amount of fundal pressure and gentle traction are appropriate.
Q. Well, the doctor can't really gauge how much fundal pressure is being applied, can he?
A. Uhm, I think he can to some extent.
You can't measure it. There's certainly no way to quantitate it. But you can tell if somebody's laying across a mother's abdomen or has a forearm across a mother's abdomen and the veins are popping out in their head and they weigh 230, that's one kind of fundal pressure.
If the person is an average size nurse who is putting a little hand on the fundus and giving a little help, you know, that's much less.
Q. Okay. So the obstetrician is in a

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position to gauge how much fundal pressure is being applied?
A. Yes.
Q. And in this record, do you see any indication that the mother is not able to adequately provide the expulsive forces?
A. Ah, you -- Like if the mother -- From the fund- -- Excuse me.
Like fundal pressure, we can't measure that, either. I just -- You know, in general, after pushing for an hour or two, people run out of steam and they can push less effectively.
Q. Well, when you reviewed the records, did you see any indications from the nurses or anybody else that was in the room that the mother is -- is fatigued and unable to continue pushing or anything to that nature?
A. There's nothing in there about her being unable to continue pushing.
I guarantee you she was fatigued.
Q. You can still be --have some level of fatigue and still be an adequate -- provide adequate propulsive forces; correct?
A. Ah, sure. And you could have some level

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of fatigue and pro- -- and have inadequate expulsive forces.
Q. Is there any indication in the record that the fundal pressure was -- was being given because the mother was too fatigued at that point?
A. I don't think the mother's level of fatigue is addressed one way or the other in the record.
Q. Let me just go back. Just because your answer was kind of long, I want to make sure I've got it correct.
In your opinion, the only occa- --
Let me start over again.
In your opinion, is the only circumstance in which it's okay to give fundal pressure when you have a recognized shoulder dystocia the point when the mother is too fatigued or, for whatever reasons, is not able to provide the necessary expulsive forces?
A. I didn't say "only."
Q. Okay.
A. You asked me --
Q. What other occasions?
A. You asked me an occasion when that would

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be.
Uhm, too fatigued or unable to give expulsive efforts. That would cover high anesthesia.
Your question relates to when is it appropriate to give fundal pressure when you have a recognized shoulder dystocia in the absence of other maneuvers?
Q. Correct.
A. I think there are very few other situations besides maternal exhaustion or high anesthesia where you would want to use the fundal pressure alone.
Q. This was not a case of high anesthesia level; correct?
A. That's correct.
Q. Okay. Okay.
In your opinion, can fundal pressure being applied to impacted shoulders cause Erb's palsy?
A. Uhm, I don't know if fundal pressure can or maternal -- traction on the head can or --
As I said earlier, it's not really clear, not always clear when fundal-- when brachial plexus injuries occur in the process.

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Q. Okay.
A. I think excessive fundal pressure perhaps could. I think traction on the head being excessive is more likely.
Q. Okay. And can a combination of fundal pressure when the shoulders are impacted in connection with some lateral traction on the head cause the Erb's palsy?
A. That's the -- that's the theory.
Not some lateral traction. Excessive lateral traction.
Q. Does the application of fundal pressure at the same time as the lateral traction on the head decrease the amount of lateral traction that's needed to produce the Erb's palsy?
A. I don't know the answer to that.
I -- I -- I think brachial plexus injuries probably occur across a spectrum of effort. A little bit of effort and some kid has a brachial plexus injury, and other babies withstand a tremendous amount of traction without injury.
Q. Okay. Is there anything in the testimony you've read or the records you've looked at that indicates the McRoberts maneuver was done

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incorrectly by Dr. Mobin-Uddin?
A. Done incorrectly?
Q. Uh-huh.
A. No. There isn't any -- There's nothing.
Q. Same question.
Anything that you have reviewed indicate that she rotated the shoulders in an inappropriate manner?
A. No, nothing indicates that.
Q. Okay. Is there anything in the records that indicates that -- or in the testimony that you have reviewed that the performance of the McRoberts maneuver or the rotation of the shoulders, those two maneuvers caused the Erb's palsy?
A. Uhm, there's nothing that indicates that; but as I said a couple times already, we really don't know when in this process in general or I think in this case the Erb's palsy injury is sustained -- was sustained.
Q. Okay. In your opinion, is it more likely or not that the Erb -- the brachial plexus injury occurred during the McRoberts maneuver?
A. I don't think --
You mean like was the McRoberts maneuver

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responsible for it?
Q. Or -- or the actions that were done during the performance of it.
A. I would doubt that the McRoberts maneuver caused a brachial plexus injury. I don't know how head flexion would do that.
Q. How about the performance of the rotation of the shoulders? Is that more likely or less likely than not to have caused the brachial plexus injury, in your opinion?
A. I think it's less likely than not.
Q. Now, is there anything in applying fundal pressure to the delivery of the head that could cause a brachial plexus injury?
A. Fundal pressure to deliver the head.
Ah, I would say not.
Q. Okay.
A. We're operating on the assumption that the shoulder is not stuck at that point.
Q. Right. Correct.
In this particular instance, do you feel it was a departure from accepted medical practice to -- or for Dr. Mobin-Uddin to have directed Nurse Long to apply fundal pressure for the delivery

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of the shoulders?
A. No.
Q. Okay. And why is that?
A. Well, actually, I think she directed her before the delivery began, as the head was crowning, to give fundal pressure. I think --
Although I can't really tell for sure when the fundal pressure was applied, there's a little check-off box, and that doesn't specify time. And she wrote in the nursing notes, Gave fundal pressure at Dr. Mobin-Uddin's order, or something.
Q. Okay. Well, I'd like you to assume that her testimony was that she gave fundal pressure for delivery of the head and also for these shoulders.
Do you feel it was a departure from accepted medical standards to direct Nurse Long to apply fundal pressure for delivery of the shoulders?
A. Uhm, no, I don't.
Q. Okay. Why not?
A. If you don't know --
If you're delivering the baby and you feel like you need some extra effort then, the baby's not coming right along and you want to augment mother's expulsive efforts slightly, fundal pressure

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is a very commonly-applied tool. It's widely used; and there's, you know, not an obstetrician around who hasn't used it.
Q. Okay. And that's for delivery of the head or --
A. Well, both.
Q. Both. Okay.
After the delivery of the head, what physically as an obstetrician are you doing at that point?
The -- the head has been delivered.
What's your next step there?
A. Gentle traction.
You know, you pull on the head. That's what you have a hold of. You have to know from experience how hard is reasonable to pull. I think textbooks say gentle traction. And you --
But you're also counting on maternal efforts to supply an umph or push from the other direction,
Q. Okay. And in connection with that, do you direct the mother to push at that point, --
A. Sure.
Q. -- once you've got the baby's head in

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your hands?
A. Yes.
Q. And at that point, are you holding the baby's head on both sides; in layman's terms, by their cheeks?
A. Yes. Or actually you're kind of --
Where they have -- You hold it there's things to grab onto, which is onto the jaw on both sides.
Q. Okay. And at that point, then, is when you would ask the mother --
When you've got everything lined up and your hands in place, is that when you ask the mother to give another push?
A. Yeah. You get the head out, you suction the baby and clear mucus and materials from the throat that may be there while the chest is compressed, and then you have mom give another push.
Q. And how long is generally the push at this point? It coincides with the contraction?
A. Yeah, or they can just push and without a contraction.
Q. Okay. How long is that push that you try to have the mom perform?

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A. I don't know. I mean, I've never timed it.
Seconds. Not -- Seconds as opposed to several minutes.
Q. Okay. So something less than a minute or around a minute?
A. Yeah. Probably up to a minute uncommon -- commonly.
Q. Okay. And then if the baby's not coming at that point, what do you do next then?
A. Well, you figure out why it's coming [sic].
Q. Okay.
A. Try to. Figure out --
You slip a hand in the abdomen, see if there's anything wrong with the baby; that you might have some sort of birth defect that -- protuberant mass that's sticking out that's obstructing things.
Q. Is this the point in which you would normally determine if there was a shoulder dystocia?
A. You can. Sure.
Q. Okay. And how would you determine that?

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A. Well, sometimes you will determine when the head sucks back in after it's out, and that's a suggestion that you might have a shoulder dystocia at that point.
Q. Okay.
A. Other times would be that when you've given what you think is an adequate traction --
I mean, traction's part of the process. Anybody that says traction is not either doesn't deliver babies or isn't telling the truth.
When you're giving what you think is adequate traction and not excessive, then you -- and the -- and the baby is not coming, then you start thinking shoulder dystocia.
Q. Okay. So then what happens then at that point?
A. I slip a finger up underneath and see if -- how the shoulder feels against the pubic bone.
Q. Okay.
A. I've already done McRoberts maneuver. I started doing that on virtually every delivery about ten years ago.
Q. Okay. And that eliminates a lot of the shoulder dystocia problems before they even become

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evident, in your opinion?
A. Well, that's my theory. I have no proof of that.
Q. Then let me just go back a second.
So sweeping the finger around the shoulders, you would be able to tell, then, if it was impacted?
A. If it feels like the shoulder is very snugly up against the symphysis, I would be suspicious I have a shoulder dystocia at that point.
If it's not and it's just poor effort on mom's part, or mom's giving her best shot and I ex- -- and there's room in there and the shoulder is not stuck, that's the time where I would put fundal pre- -- have them use fundal pressure.
Q. Okay. From your reading of the records and the testimony, is that the sequence of events that happened in this case?
A. I don't think it's spelled out in exact detail as we're breaking this down second by second, about the -- putting the finger in and feeling the shoulder and that sort of thing.
Q. I kind of skipped over some just general

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background stuff here.
You've delivered shoulder dystocia infants, I take it; --
A. Yes.
Q. -- correct?
How many times have you probably run into that in your practice over the years?
A. I have no idea. I was thinking a couple days ago I've probably delivered four or 5,000 babies. So if it's one percent of the population, that's probably what? 50?
Q. Okay. Have any of those babies, to your knowledge, sustained a permanent Erb's palsy injury?
A. Not to my knowledge.
Q. At trial, are you going to be offering any opinions as to any other causation for the child's injuries at this point?
A. Uhm, I mean, I have to answer the questions I'm asked. I'm not going to come up with anything we haven't talked about so far.
I do think it's -- The more I read about shoulder dystocia, the less clear the etiolgies of Erb's palsies is to me. I think that's a point worth bearing in mind.

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Q. In your opinion, did the mother do anything during the delivery to cause this injury?
A. NO.
I think her -- You know, her weight's a potentially contributing factor and her -- and the baby's weight, which is not directly under her control but indirectly so.
Q. Okay. She was a big baby; correct?
A. Yes.
Q. Okay. She was not a --
You've delivered bigger ones, though; correct?
A. Sure. But, you know, nine-eleven or whatever she is is getting at the 99th percentile probably.
Q. When you indicated sometimes you need to apply fundal pressure to deliver a big belly, this isn't one of the -- that size range baby, is it?
A. Well, it's not the s- -- absolute size.
The record doesn't say that was done, so I don't think we have to go there. But it can be if it's a smaller pelvis and a smaller mom.
Q. In your opinion, can a doctor's

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negligence ever result in an Erb's palsy injury to the baby?
A. Yes.
Q. And what type of circumstances can a doctor's negligence lead to Erb's palsy?
A. I think failure to diagnose gestational diabetes would be one case, because it contributes to macrosomia, which is a contributing factor to Erb's palsy.
Q. Okay.
A. Another would be that --
You know, we're talking truly hypothetically here; that somebody has a shoulder dystocia, puts on tremendous traction efforts on the head without making -- doing any other maneuvers would be contributing to it.
Q. Okay.
A. I think fundal pressure without any other maneuvers probably contributes to it.
I think traction, excessive traction is probably more contributory in a general sense.
You know, if -- you can push all you want on the fundus; and if you're not pulling on the head, you're probably not going to hurt their

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brachial plexus.
Q. Well, if the doctor was applying lateral traction to the head at the time the fundal pressure was being given, can that --those actions together be negligence?
A. Lateral traction is part of the normal delivery process. That's the gentle traction we've been talking about.
Q. Uh-huh.
A. You know, you keep seeing the term "excessive lateral traction" in here. I don't know --
Somebody who wasn't there, presumes to know it's excessive lateral traction's beyond me.
Q. Well, let me put it another way.
Have you ever seen a record where a doctor wrote, "I applied excessive lateral traction to the head in the delivery of this infant"?
A. No.
Q. How would you be able to tell after the fact that excessive lateral traction was applied to the head?
A. I can tell you how you can't tell, and you can't tell by the existence of an Erb's palsy.

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I don't think the existence of a Erb's palsy necessarily implies excessive lateral traction.
Q. Okay. Well, how could you tell as a reviewing physician when lat- -- excessive lateral traction was applied by a doctor in a delivery?
A. One circumstance I can think of is if the family had a videotape of the delivery.
Q. Okay. Do you know whether or not there's a videotape in this case?
A. I would assume it would have been introduced by now if it were.
I don't think it was -- there is, I mean.
Q. Okay. Aside from a videotape, is there any other way of telling after the fact whether or not a doctor applied excessive lateral traction?
A. Only in the --
If there are other medical personnel there who would have an opinion in that matter.
I don't think, you know, lay people or after-the-fact observers are in a very good position to judge what's excessive.
Q. Would an obstetrical nurse who is up by the mother's head helping with fundal pressure be in

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a position to gauge the amount of traction being applied by the physician?
A. If she's up by the mother's head, she probably isn't in a position to see much. And she probably also was not up by the mother's head if she was applying fundal pressure.
Q. Okay. If she's up in the position right next to the mother applying fundal pressure, would she be in a position to gauge the quality of the lateral traction?
A. Yes, I think so.
Q. And how would she be able to gauge that by observation? What would she be looking for?
A. Experience -- Based on her experience that one someone was pulling too hard or too much of an angle or for too long. And it's a subjective call by the -- based on the experience of the nurse.
Q. In your own practice, do you utilize the application of fundal pressure when you encounter shoulder dystocia?
A. In general? Yeah, occasionally. It depends on exactly what part of the delivery process we're talking about.
It's not a -- you know, the first thing

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I do. But that doesn't condemn it. Other people rely on shoulder dys- -- or fundal pressure as a major part of their toolbox.
Q. Okay. In the other cases where you have served as an expert in a shoulder dystocia case, were you always the expert for the doctor or were on occasion you the expert for the patient?
A. I don't think I've been an expert for a patient in a shoulder dysto- --
Yes, I have. I looked at a case for an attorney filing an action against a doctor for a shoulder dystocia case. I didn't serve as an expert. I don't know whatever happened to the case.
Q. Okay. In your opinion, was the doctor negligent in that case?
A. Yes.
Q. Which attorney was that?
A. Uhm, it was Greg Gibson, a guy in Dayton. I don't know if he was defending or pursuing the case. But it was clearly negligent, in my opinion.
Q. Okay. And what was obvious in the records in that case to make the negligence obvious?

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A. A failure to diagnose gestational diabetes resulting in like a 13- or 14-pound baby.
Q. So that was primarily a -- kind of a prenatal departure.
A. Right.
Q. In any of the cases that you've reviewed, have you ever testified that the application of fundal pressure when a shoulder is stuck is a departure from accepted medical standards?
A. I don't know. I -- Probably not.
I think shoulder -- fundal pressure is something that every obstetrician has used at one time or another. Sometimes it saves some lives. It is controversial in the literature. But there's not a guy or gal around who has delivered babies who hasn't used it at one time or another to get a baby out.
Q. For shoulders -- shoulder dystocia or for the delivery of a head?
A. Either one.
Q. Have you ever testified that application of fundal pressure when the shoulder is stuck is contraindicated?

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A. I don't know. I would -- I don't remember, you know.
Q. Have you ever testified that you personally do not use fundal pressure when shoulders are stuck?
A. I don't know that.
As I said earlier, I -- we've all used it at one time or another. It's not the first thing I would rely on.
Q. If I told you you had testified in that manner on a prior occasion, would you indicate that your testimony was incorrect then?
A. I would have to see --
Repeat the question. If I testified in what manner?
Q. Okay. Have you ever testified that you personally would not use fundal pressure when shoulders are stuck?
A. I don't know if I've testified to that or not.
As I've said, I'm saying to you now, I wouldn't -- it's not my first choice of tools to deal with this.
Q. If you had testified in the last couple

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of years that application of fundal pressure when the shoulders are stuck is a departure from accepted medical standards, would you disagree with your testimony now?
A. I think I would. I don't remember testifying to that effect.
Uhm, it is a controversial practice. It's much more condemned now than it was 15-- 10, 15, 20 years ago.
Q. Has anything -- Let's strike that.
If I told you you have testified in the past that the application of fundal pressure when the shoulders are stuck is a contraindicated medical maneuver, would you say that your opinion has changed since the time you testified to that?
A. I think that's a very black-and-white answer. I would like to see the context it's in.
I'll repeat to you what I said earlier. I don't use fundal pressure as my first tool in this situation.
And I know that there's literature saying that you're not supposed to do that, but I also know there's not an obstetrician around who hasn't saved a baby's life with fundal pressure.

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Q. Has anything come out in the medical literature in the last year or two that would change your opinion with regards to the appropriateness of applying fundal pressure in a shoulder dystocia case?
A. I don't think so.
Q. Have you ever had the opportunity to speak with Dr. Mobin-Uddin directly about this particular delivery?
A. No.
Q. Have you ever had the opportunity to discuss -- Strike that.
During the course of serving as a defense expert in this case, have you taken any notes about the records you have reviewed or your opinions or anything?
A. I have written -- I've made notes, which I've got here from the record, to make review easier. I have not got any opinions on paper.
Q. Okay. And are all of your notes simply notations of findings that you found in the records or testimony?
A. Exactly. They're extracts -- extracts of the facts from the record, from depositions and

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medical records so I don't have to review the whole thing.
Q. Okay. Have you prepared any reports in this case?
A. No.
Q. And how many pages of notes have you taken?
A. I don't know. I can count them if you want to.
Q. Okay. Can you count them for me?
A. (Witness complying.)
Nineteen.
MS. JOHNSON: Okay. We can take care of it after the fact, but I'd like to have a copy of those and just mark them as an exhibit and we'll make copies later on. I don't want to go through them now.
Is that okay?
MR. FOLIANO: Okay.
Q. Do you have any other opinions concerning the standards of care in this case that we haven't discussed either in this deposition or at your prior one?
A. I don't think so.

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Q. Okay. Is it still your opinion that Dr. Mobin-Uddin did not depart from accepted standards in any manner in delivery of this baby?
A. That's my opinion.
MS. JOHNSON: Okay. I have no other questions. Thanks.
MR. FOLIANO: He'll read.
(Signature not waived.)
- - -
Thereupon, the deposition concluded at approximately 9:10 a.m.
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AFFIDAVIT

THE STATE OF OHIO:
SS:
COUNTY OF FRANKLIN:

I, Stephen John DeVoe, M.D., do hereby certify that I have read the foregoing transcript of my deposition given on May 6, 1999; that together with the correction page attached hereto noting changes to form or substance, if any, it is true and correct.

_____
Stephen John DeVoe, M.D.

I do hereby certify that the foregoing transcript of the deposition of Stephen John DeVoe, M.D. was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on this day of ,1999.

_____
NOTARY PUBLIC, STATE OF OHIO
My Commission expires:_____

CERTIFICATE

THE STATE OF OHIO:
SS:
COUNTY OF FRANKLIN:

I, Beth A. Higgins, a Registered Professional Reporter and Notary Public in and for the State of Ohio, do hereby certify that before the taking of his said deposition, the said Stephen John DeVoe, M.D. was f i t duly sworn by me to tell the truth, the whole truth, and nothing but the truth,

That said deposition was taken in all respects pursuant to the stipulations of counsel heretofore set forth, that the foregoing is the deposition given at the said time and place by the said Stephen John DeVoe, M.D.;

That I am not an attorney for or relative of either party and have no interest whatsoever in the event of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 1 lth day of May, 1999.

_____
BETH A. HIGGINS, RPR
NOTARY PUBLIC, STATE OF OHIO

My commission expires
July 16.2000.
